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NO. 82-1734

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

LINDA SIDOTI PALMORE,
Petitioner,

v.

ANTHONY J. SIDOTI,
Respondent.

On Writ of Certiorari to the District Court of Appeal of the State of Florida for the Second District

BRIEF OF RESPONDENT

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QUESTION PRESENTED

WHETHER THE EQUAL PROTECTION AND DUE PROCESS CLAUSES OF THE FOURTEENTH AMENDMENT PROHIBIT A COURT FROM CONSIDERING OR FROM RELYING UPON A SUBSEQUENT INTERRACIAL MARRIAGE OF THE CUSTODIAL PARENT AS A GROUND FOR ORDERING A CHANGE OF CUSTODY.

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BRIEF OF RESPONDENT

INTERESTS OF PARTIES

Because the Solicitor General of the United States filed in behalf of the mother, Linda Palmore, and because the child is an interested party and the subject matter of this litigation, Respondent has included argument in behalf of the child.

STATEMENT OF FACTS

The Circuit Court of the Thirteenth Judicial District Court of Florida ordered a change of custody from Petitioner to Respondent based on a pivotal finding that the mother's "... action tended to place gratifications of her own desires ahead of her concern for the child's future welfare."[1] Part of the child's future was society's attitude toward interracial remarriages.

SUMMARY OF THE ARGUMENT

Petitioner's cohabitation and subsequent marriage to a person of another race does not automatically move her into a "suspect class" or classification that would warrant judicial scrutiny. The state action complained of is directed at

1. Trial court's Order on Modification of Final Judgment (Pet.A. 25-26)(R.13)

her relationship with her child and not her relationship with her husband. To extend the doctrine of McLaughlin[2] beyond Loving[3] to the relationship that exists in this case would create a "new class" far beyond the present scope of the doctrines governing suspect classes.

If there is any classification in this case, there is a rational relationship between the state interest and the class which would justify such classifications. That relationship is the role of the State as parens patriae in the welfare of the child.

Assuming arguendo that there is a "suspect class" somehow created in this case, the rights of the child are a compelling state interest to be protected by the State of Florida that would justify classification in this instance.

2. 379 U.S. 184 (1964)
3. 388 U.S. 1 (1967)

Loving[4] and McLaughlin[5] can be distinguished as cases classifying relationships between consenting adults, which relationships were improperly prohibited by statute.[6] Here the action complained of is not governed by statute nor is it governmental intervention in actions between consenting adults. It is the discretionary action of a state court in protecting a defenseless child from the arbitrary actions of the parent.[7]

The true test in this cause is whether or not the trial court has improperly classified the parent-child relationship using the "best interests of the

4. Ibid.
5. Supra.
6. Miscegenation statutes such as Virginia's statute prohibiting interracial marriage and Florida's prohibiting interracial cohabitation both assigned criminal conduct and sanctions to the relationship between consenting adults.
7. This is merely the supervision of custodial duties by a court with continuing jurisdiction where the mother is not subjected to any penalty and may regain custody in the same manner as the father obtained it.

child" test. The "best interests of the child" test can be more reasonably stated as the trial court making the least detrimental alternative. Thus the state trial court should and did make its decision based on what would harm the child the least.

The proper party to defend the rights of the child is the state or federal government. The state trial court's action in defense of the child therefore should properly be represented by the Solicitor General. Thus the Solicitor General has chosen to enter this cause in behalf of the wrong client.

ARGUMENT

I. PETITIONER DOES NOT BELONG TO A CLASS OR CLASSIFICATION WARRANTING JUDICIAL SCRUTINY AS A "SUSPECT CLASS."

This case has been incorrectly

assigned to a category of suspect classification similar to interracial marriage. (All opposition briefs[8] extend Loving[9] and McLaughlin.[10]) However, the trial court was correctly looking at the relationship between the mother and child when it first made a finding as to the race of the stepfather,[11] then found that the mother thought only of herself[12] to the detriment of the child and only then

8. It is interesting to note that all amicus briefs, as well as Petitioner's brief, seek to deal with this case as a relationship between procreators (marital situations) rather than procreator and progeny as, for instance, an adoption.
9. Supra.
10. Supra.
11. (Pet.App.26) "The father's evident resentment of the mother's choice of a black partner is not sufficient to wrest custody from the mother."
12. (Pet.App.26) "...Such action tended to place gratification of her own desires ahead of her concern for the child's future welfare." Respondent would note that the Solicitor General struggled to downplay this to demonstrate some sort of racial bigotry on the last page and in the last note of his brief. (Amicus Brief, p.18, note 11).

commented on a major problem[13] that the child would face in the future that would necessitate a sympathetic concerned outgiving on the part of the mother. Perhaps the trial court could have verbalized its holdings in a more complete manner rather than by merely joining them as though they were single thoughts in a single paragraph. To presume a racial bias and then to assign it a status as the "pivotal (and probably the exclusive)..."[14] point of the trial court's order flies in the face of the complete paragraph. Further, it assigns error to an incomplete thought and strains to

13. (Pet.App. 26-27) This Court feels that ... it is inevitable that Melanie will, if allowed to remain in her present situation ... suffer ..." The present situation that the trial court is concerned about is obviously the mother's self gratification which, when related to the future, will result in stigmatization because the mother can not help her child to cope.
14. (Pet.B. p.9,22,27) Although acknowledging other evidence (see: p.21), Petitioner consistently attempts to limit the evidence by use of the word "pivotal" which by its very definition requires that other points be present and would

create a constitutional issue by artificially assigning separate thinking to each part of the single paragraph. It is more credible to designate the paragraph to be the interdependent and integrated thought of the trial court. The class was thus not a mother as one-half of a racially mixed remarriage, but was a mother who demonstrated that she could not relate a racially mixed marriage to her child.

Assuming arguendo that there is a classification as claimed by petitioner in this case, it must be determined if there is a "suspect class."/15 The mere fact

necessitate Petitioner to be clairvoyant to know what the trial court considered to be "pivotal". This case would obviously be much easier for Petitioner if the supposed consideration of race was the only point in question, but, by her own admission, it is not. It would also be easier if the question before the trial court was one relating to the marriage, but it is not. To label this point pivotal does not make it so any more than it would be proper for Respondent to label the sexual self gradification pivotal merely because the trial judge labelled it significant.

15. There seems to be two tests to determine if classification is or is not constitutionally permissible: (1) In cases of ordinary classi-

that the mother is married to a black man does not create a "suspect class."

The only state activity to be scrutinized is the trial court's exercise of its discretion in loco parentis[16] in determining the best interest of a child, which case, such a state activity is a rational relationship between the state and the activity which is classified, if any.[17] However, in this particular case, petitioner asks this Court for review because she claims that the trial court's consideration of her cohabitation with and

fication, it will be permissible if there is a rational relationship between the class and the purpose of the statute or action creating the class; however, (2) if the class being scrutinized relates to a "suspect" class, the state must demonstrate a compelling state interest before the classification can be adjudged constitutionally valid. San Antonio Independent School District v. Rodriquez, 411 U.S. 28 (1973); Harper v. Virginia State Board of Education, 383 U.S. 663(1966); Frontiero v. Richardson, 411 U.S. 677 (1973); Board of Regents v. Roth, 408 U.S. 564 (1971).

16. Finlay v. Finlay, 240 N.Y. 429, 148 N.E. 624 (1925).

17. See pages 13-17 and accompanying notes, 31-35.

subsequent marriage to a person of another race is an unconstitutional "suspect" classification.[18]

The class into which the trial court placed her was that of an insensitive mother who just happened to be married to a black man. Thus, it is the relationships between interracial marriage and best interest of the child that must meet the test of unlawful "suspect" classifications, not the interracial marriage.

The criteria for determining if a class is suspect are in part or in whole: (1) the existence of a history of purposeful unequal treatment[19], and/or (2) that membership is a result of an immutable characteristic[20], and/or (3)

18. For some unknown and unexplained reason, by ignoring the court's discretion to consider all matters before it and with a clairvoyent knowledge that these factors are all that the trial court considered, Petitioner and amici isolate a racial issue.
19. San Antonio ISD v. Rodriquez, Supra.
20. Frontiero v. Richardson, Supra.

the presence of a collective violation of a fundamental right protected elsewhere in the Constitution[21]. The Petitioner in this cause is not so classified.

The mother is a member of a number of classes which various court's have from time-to-time dealt with as permissible classifications: she was promiscuous[22]; she was one-half of an interracial marriage[23]; and she may have been neglectful[24]. The record does not reflect, nor does Petitioner's brief indicate, that the existing parent-child relationships have been subjected to a history of purposeful unequal treatment. True, the trial court refers to this type

21. Harper v. Virginia State Board of Education, Supra.
22. Lisenby v. Lisenby, 419 So2d 354 (Florida, 1982), where conduct adversely affects the child.
23. Drummond v. Fulton County Dept. of Family and Children's Services, 563 F2d 1200 (5th Cir. 1977), cert. denied 437 U.S. 910 (1978). An adoption.
24. Moore v. Sims, 442 U.S. 415 (1979) Involuntary removal of an abused child.

marriage as not yet being accepted by society, but that does not, by inference, say anything about the relationship between child and marriage. Given the other factors of insensitivity on the part of the mother, it is as reasonable to infer that the court was referring to this as an isolated case affecting this particular child rather than to all similar cases.

Certainly, the membership in the class as claimed by Petitioner is not the result of an immutable characteristic. The race of this child and this parent are white which is not an immutable characteristic that warrants judicial scrutiny. Only the race of the parent's spouse has changed. Likewise, there is no fundamental right protected elsewhere in the Constitution that is being violated. The state of Florida is protecting the

best interests of the child; that is to say, the child has the right to receive care, control, protection, moral and religious training, reasonable discipline, clothing, food, shelter and education,[25] which the parents collectively have the duty to provide. In protecting these rights, the trial court looked at the testimony of the parties and the court ordered social investigation relative to the parent-child relationship,[26] (the interracial marriage of the mother being

25. Virtually all states provide either in their case law or by statute that the child has a right to all these things. All but five states, Illinois, Massachutsetts, Missippi, Pennsylvania and South Dakota have no fault divorce and thirteen states, including Florida, have exclusively no fault divorce. See: Jane Shey Lych & Sara Lyn Smith's The Women's Guide to legal Rights, Contemporary Books, Inc. (1979). Those facts made it easier for the court's usual attitude toward granting custody to women and support to men; however, the court's discretion is still the primary issue and except for limited and, when presented, isolated instances, is not to be challenged on appeal. Here the Petitioner attempts to strip away all factors but one from the trial court's finding.

26. (Pet.A. p.23)

only a collateral part thereof), as well as the lack of health care[27], lack of hygene[28], lack of appropriate clothes[29] (at times), and immorality[30], not as a classification but as criteria.

Even if this Court should find that the petitioner is of a "suspect class," as to the marriage, the relationship between the right to marry and the privilege of custody is not so classified. The state's interest in the well-being of the child as a whole is a state interest which rationally warrants the classification, if any.

II. THE RATIONAL RELATIONSHIP BETWEEN STATE INTEREST AND CLASS WHICH JUSTIFIES CLASSIFICATION, IF ANY, IS THE ROLE OF THE STATE AS PARENS PATRIAE IN THE WELFARE OF THE CHILD.

Classification, if not a "suspect

27. (Pet.A. p.24)
28. (Pet.A. p.24)
29. (Pet.A. p.24)
30. (Pet.A. pps.24, 25, 26)

class", may be justified by showing a rational relationship between the state interest and the class[31].

The state's interest is grounded in the doctrine of parens patriae[32] upon

31. See pages 7-10 and notes 15, 19-21

32. The concept of parens patriae is certainly not stagnant having evolved from the Roman concept that both child and mother are the property of the man. Given the help of Poet Percy Shelly [Shelly v. Westbrooke, Jacob 266, 37 Eng. Rep. 850 (1817)], modern man by the end of the nineteenth century had lost his firm grip on always getting the children. Based on Luther's timeless philosophy of the womanly role: "Men have broad and large chests and small narrow hips and are more understanding than women who have but small and narrow chests and broad hips, and to the end they should remain home, sit still, keep house and bear and bring up children." (Martin Luther, Table Talk, p. 725), the doctrine evolved into a presumption that mothers should have the children. That notion survived from late in the 1800's to the 1960's. In 1960 a couple ceased to be "one" when married and became "two" when Justice Frankfurter in Dege v. U.S., 364 U.S.51 (1960) found that a wife could be tried separately from her husband. At the same time a scattered group of morality opinions further eroded the motherly presumption with divergent views of a man's right to custody. A Notre Dame scholar (probably following church doctrine) commented "It is not logical to assume that a woman can be a good mother and an adultress at the same time." 24 Notre Dame Law Review 597 (1949). Maryland found a presumption against the mother for such conduct in Hild v. Hild, 221 Md 349 (1960); Arizona

which interest the state may look to the relationships between the role of a parent and the best interests of the child. Courts have looked at and examined many roles and relationships, all of which are, in one form or another, types of classification.[33] The state has a duty to evaluate and, if necessary, to classify the parental role together with all other

showed an enlightened view that if the children were unaware of the mother's conduct, no harm resulted [Grimditch v. Grimditch, 71 Ar 536 (1960)], and Oregon presented the best application in holding that the immorality was merely one of many factors while taking the children from a mother who had her child bring her beer while in bed with her paramore [Strout v. Strout, 224 Ore 52 (1960)].

33. poverty: Harper v Virginia State Board of Education, supra.; religion: Wisconsin v. Yoder, 406 U.S. 205 (1972), In re Green, 448 Pa 338; life style: Palmer v. Barrister, 258 Ia 1390 (1966); age: Raymond v. Cotner, 175 Neb 158 (1963) age and parental rights misconstrued; morality: Gesicki v. Oswald, 366 Fed.Supp. 371 (N.Y. 1971); criminality: Robinson v. California 370 U.S. 660 (1962); homosexuality: Nedler v. Superior Court, 255 Cal.App. 523 (1967); ancestry: Frontiero v. Richardson, supra.; race in adoption: Drummond v. Fulton County Dept. of Family and Children's Services, supra.; intellect (i.e. the mental retarded or

factors relating to care, control, protection, reasonable discipline, clothing, food, shelter, and education.

As Benjamin Cardosa said on parens patriae:

> "The chancellor in exercising his jurisdiction upon petition does not proceed upon the theory that the petitioner, whether father or mother, has a cause of action against the other or indeed against any one. He acts as parens patriae to do what is best for the interest of the child. ... He is not adjudicating a controversy between adversary parties to compose their private differences. He is not determining rights "as between a parent and a child," or as between one parent and another ... Equity does not concern itself with such disputes in their relation to the disputants. Its concern is for the child."/34

chronic drunks); political persuasion (i.e. an antagonist or violent political dissident); health (a chronically ill parent or one having a terminal illness); sex (See: note 32): In keeping with this wide variety of considerations the principal is best summarized by Justice Frankfurter way back in 1940: "The Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same" [Tigner v. Texas], 310 U.S. 141, 147 (1940)].

34. Finlay v. Finlay, supra.

The judicial system tends to lump children together with incompetents and drunks to be treated as chattels[35]. Would Petitioner suggest that the State has deprived her of her property without due process of law? The lessons of Lesser v. Lesser as demonstrated in Goldstein and Katy, The Family And The Law, are enough justification for any state to try to prevent the use of a child as a whip by one parent against another. The Judeo-Christian belief in the dignity of man, and in the sacredness of man, and in the integrity of the individual should not have a cut-off point based on age. It is the responsibility of the State to evaluate and, if necessary, to classify.

III. THE RIGHTS OF THE CHILD ARE THE COMPELLING STATE INTEREST TO BE PROTECTED BY THE STATE OF FLORIDA.

35. A "Bill of Rights" for Children, Henry Foster, Jr., Charles C. Thomas, Publisher (1965), at p. 14.

Assuming arguendo that there is a "suspect class" involved in this cause, there is a compelling state interest that would justify the classification[36]. That compelling state interest is to protect the rights of the child for care, control, protection, reasonable discipline, clothing, food, shelter, and education.

Not only is it a compelling state interest, but it is one that is hard to recognize as is most graphically illustrated in the filing of briefs before this Court when the Solicitor General for the United States files a brief on behalf of a parent rather than the child thus showing a shocking lack of understanding as to the state's interest in the child. (See paragraph VI, note 65.)

A threshold question to ask is: at what point does parental behavior begin to

36. See: pages 6-8, notes 15, 19-21 for discussion on tests.

have such an effect upon the interests of the child that the state is compelled to intervene? Along those lines it can further be asked: Where does discipline end and physical abuse begin?/37 Where does affection end and sexual abuse begin?/38 Where does dislike for another end and psychological abuse begin?/39 Where does self interest end and emotional abuse begin?/40 To answer these questions, it must also be asked: Does it take one major incident, event or condition?/41 Will a number of minor incidents, events or conditions suffice?/42 And if so, how many?

Substantively, it may well be impossible and incomprehensible to legislate the rights of children beyond

37. State v. Straight, 347 P2d 482 (Mont. 1959)
38. 73 Yale Law Journal 151 (1963)
39. Application of Mittenthal, 37 Misc. 2d 502 (1962)
40. the instant case
41. Clark, Law of Domestic Relations, (1968) p. 346-348.
42. Application of Mittenthal, supra.

merely saying the best interests of the child. Procedurally, it is almost as hard to judicially determine those rights; yet there is precedent for procedural protections and rights, as in In Re Gault[43], where a delinquent child has the right to counsel in a juvenile proceeding. In In Re Winship[44], a child must be found to have committed delinquent conduct beyond a reasonable doubt, but according to McKeiver v. Penn[45] is not entitled to a jury trial. The child must be given notice and hearing in non-judicial hearings (i.e. expulsion from school) (Goss v. Lopez[46]), yet is not entitled to counsel in commitments by his parents, (Parhan v. J.R.).[47]

43. 387 U.S. 1 (1967)
44. 397 U.S. 358 (1970)
45. 403 U.S. 528 (1970)
46. 419 U.S. 565 (1975)
47. 442 U.S. 584 (1979) Also in removal situations as in Moore v. Sims, 442 U.S. 415 (1979); warrantless searches by welfare workers, Wyman v. James, 400 U.S. 309 (1971); searches by school authorities acting in loco parentis,

Although the trial court did not do so in the instant case, Respondent would urge that in similar cases, a trial court could best protect the child by appointment of a guardian or attorney ad litem.[48] Had the trial court here used the same person to act as guardian ad litem as he used to do the social study and then, by following the request of the ad litem, the results would have been the same but the burden would have been removed from the court.

IV. LOVING AND McLAUGHLIN

Petitioner attempts to extend the doctrines of Loving[49] and McLaughlin[50]

Maxwell v. Stephens, 348 Fed. 325 (8th Cir, 1965); giving a host of rights at a waiver hearing, Kent v. U.S., 383 U.S. 541 (1966); right to treatment, Morales v. Texas, 383 F.Supp. 53 (Tx. 1974).

48. Smith v. Organization of Foster Families, 431 U.S. 816 (1977). Even though this is an adoption case, it should set the precedent for cases such as the instant case where the parental interests are in conflict.

49. Supra.

50. Supra.

to the situation now before the Court. In both referenced cases the state was trying to regulate adult behavior between two consenting adults by statutory prohibitions./51 In the instant case, Petitioner would have this Court believe that the State is trying to penalize her behavior with another consenting adult by judicial action, i.e. coercing her to give up her paramore, later her husband, by taking her daughter./52

Procedurally the state can properly regulate the parent-child relationship in a number of ways, some severe and some quite simple, but all of which are a form of coercing proper parental behavior toward the child. The state can criminally prosecute the parent for abuse or neglect,/53 which abuse and neglect can be emotional and psychological/54 as well

51. See: p. 3, notes 6 and 7.
52. (Pet. B., p. 30)
53. State v. Straight, supra.
54. Foster and Freed, the battered child, Trial, 1967.

as physical; and the state can terminate the parental rights of an offending parent[55] or can merely take temporary custody of the child,[56] which temporary custody can be modified later if the parent changes;[57] and, finally, in the simplest judicial form, the state merely acts as monitor for divorce and change of custody.[58]

If the instant case dealt with a criminal prosecution for emotional or psychological abuse of the child because of the remarriage, the Petitioner's attempts at relating it to Loving and McLaughlin could possibly be understood. Perhaps even a termination action or a

55. In the Matter of Vanderbilt, 245 App.Div. 211 (N.Y. 1935), showing, in part, that even the very rich are subject to abuse and neglect. In Gloria Vanderbilt's case: parental rejection.
56. The so-called "Baby Lemore Cases". People ex rel. Scarpetta v. Spence-Chapin Adoption Service 321 NYS2d 65 (1971) and the companion habeas corpus filed in Florida, 262 So2d 442, cert. denied, 93 S.Ct. 437 (1973).
57. Kovacs v. Brewer 356 U.S. 604 (1958)
58. as in the instant case.

custody action brought by the State could stretch Loving and McLaughlin to a logical conclusion. But to move from statutory restraint by the state through criminal prosecution to monitoring by a domestic relations court pushes either the analysis of either of the referenced cases beyond any reasonable common law application.

If the remarriage stood strictly alone as the only evidence before the trial court[59] and the record was devoid of any other evidence,[60] material,[61] reports or opinions,[62] then Respondent would have to acknowlege that there may have been an unconstitutional classification, not because of impermissible judicial regulation of behavior, but, rather, because of the failure to show a rational relationship between the mother's

59. (Pet.A. p. 23)
60. (Pet.A. p. 24)
61. (Pet.A. p. 23)
62. (Pet.A. p. 23-28)

new relationships and the state's interest, the interests of the child.

V. THE TRUE CLASSIFICATION TEST IS "BEST INTERESTS OF THE CHILD."

If this Court is to establish a general rule as a result of this review, Respondent submits that first, there is never a "suspect class" when dealing with children; permissible constitutional classification may be shown by merely showing a rational relationship between the class and the purpose, i.e. the best interest of the child;[63] and second, if a class question is involved, even remotely, as in this controversy, the state in its role as patriae parens has a duty to

63. Although addressing the phrase "proper parental care," the Court in State v. Metter 5 Fam.Law.Rptr. 2670 (1979) certainly could be defining best interests of a child when it said that the words should be interpreted "... in light of history, culture, generally accepted standards of morality and the common understanding of conscientious and well-intentioned parents."

appoint an ad litem for the children, either a guardian or an attorney. Third, the trial court should look at and apply all the facts to the parent-child relationship in a manner which will have the least detrimental effect on the future of the child.

It is not the interracial marriage that is at question here, it is the mother's total lack of sensitivity to the child's needs. The trial court properly noted[64] the improper dress, the existence and lack of fundamental hygene (head lice), the failure to care and treat the ear infection, and the self gratification of going to or bringing men into the home and correctly projected such lack of sensitivety to the future, i.e. the inability to assist the child in coping with the pressures of the community

64. (Pet.A. p. 23-28)

brought about, not by the child, but by the mother's self gratification, her cohabitation and later interracial marriage.

The trial court took the facts surrounding two essentially similar parents and an innocent child and applied what was the least detrimental approach. The evaluation of the future based on the present created a decision based on what would harm the child the least. The trial court correctly projected the mother's self gratification to a future insensitivity of the child's future problems with race. Thus the trial court's decision follows a logical progression which states: if the mother can not demonstrate that she can cope with accepted morality and hygene, the trial court could <u>not</u> expect her to properly

guide, nurture and protect her daughter from the bigotry generated from her remarriage.

VI. SOLICITOR GENERAL IS REPRESENTING WRONG PARTY.

The State has fifteen or more roles vis-a-vis the parent and a child. It may prosecute a criminal act such as abuse or neglect. The same set of circumstances might result in a civil suit to remove the child permanently from the home or the same circumstances may only result in a temporary removal of the child from the home. If the natural parents are married, the state may look at the circumstances when dissolving the marriage or, if the natural parents are already divorced, then the State may look at the circumstances in a modification of custody. Additionally, the state has an interest in the child in

an adoption, in a juvenile proceeding, in a certification proceeding, in a proceeding to determine if the child is in need of supervision, or if the child is a victim of family violence, whether the child is qualified to act as a witness, and if the child is to be emancipated. Finally, the State has to protect the child in probate, trusts, and inheritence, provide an education, and, if ordered, a home and support.

In no instance does the state have an interest in the marriage of the parent except to divide property and act as parens patriae to the child. In no instance does the state side with one parent against the other.

Respondent objects to the United States Government, by and through the Justice Department, entering this litigation on behalf of one parent against

the other.[65] Respondent submits that the Solicitor General has an obligation only to the child and to the defense of the child's best interests. The trial court's protection of the child should be supported by the state. For the U. S. Government to attack the judgment of the trial court's findings of what is the child's best interest leaves Respondent in the position of both defending the court and his own interests.

CONCLUSION

For the reasons stated above, the decision of the courts below should be affirmed.

Respectfully submitted,

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January 9, 1984

65. Amicus claims his right to defend the mother under Section 902 of Title IX of the Civil Rights Actof 1964, 42 U.S.C. 2000h-2 "... seeking relief from denial of equal protection ... on account of race [or] color." [Amicus B. p.2] yet overlooks the substantial interest in the Court's resolution of the child's equal protection issue which he should have raised in this case, i.e. the rights of the child in a racially mixed and unsympathetic environment.